ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1083 OF 2004

Jagannath Pandu More & Ors. ...Appellants.

Vs.

Babasaheb Hasan Sande & Anr. ...Respondents.

Mr. G.S.Godbole for the appellants.

Mr.Vijay Patil for respondent Nos. 14 to 19.

Mr. Javeed Hussein, B.M.Shaikh & Ibrahim Mulla for respondent Nos. 1,2,8 and 9.

CORAM : ANOOP V. MOHTA,J.

DATED : 24th July, 2007

P.C.

1. The original plaintiffs being aggrieved by the concurrent findings given by the courts below sought to re-agitate the issue before this court in the Second Appeal. Both the courts come to the conclusions that the plaintiff/appellants failed to prove that the Judgment in Regular Civil Suit No.410/1968 and Regular Civil Appeal No. 182 of 1971 were obtained by fraud and misrepresentation.

2. The law is settled in so far as the misrepresentation is concerned. It must be clear and duly proved. In the present case, that foundation was

lacking.

3. Apart from that the point of limitation as answered by the courts below is a relevant factor which is also against the plaintiff/appellant. The Regular Civil Suit No. 410 of 1968 was decided on 31/03/1971 and confirmed in the Second Appeal in the High Court on 13/01/1976. The execution proceedings filed on 16/12/1981. The present suit was filed on 29/11/1983. As per Article 59 of the Limitation Act, the suit need to be filed within three years from the date of earlier judgment. The date of computation from the filing of execution proceedings No.147 of 1981. The submission based on it, is incorrect.

4. The period has to be commenced/computed from the date of judgment i.e. 31/03/1971 the dismissal of the Second Appeal was on 13/01/1976. The further submission that the plaintiffs had no knowledge of this judgment is untenable. In all the proceedings referred above, some of the plaintiffs were parties in the said proceedings. It is difficult to accept the contention that the other defendants have no knowledge of the sale-deed. Both the courts are right in dismissing the suit on the point of limitation also.

5. Having once reached to this conclusion by both the courts below, the aspect of res-judicata in view of all the courts an orders passed by the earlier court, therefore, difficult to allow to reagitate in this case on the ground of fraud and misrepresentation.

6. The last aspect of impartiality of Inam land as contended by the learned counsel appearing for the appellant just cannot be taken note of in the suit for declaration on the ground of fraud and misrepresentation. Therefore, that issue is also answered in negative.

7. In view of this, in my view there is no substantial question of law involved in the present case.

8. Resultantly, the Second Appeal is dismissed.

(ANOOP V. MOHTA, J.)